

EXHIBIT

"3"

**UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID F. KELLY BEY, Plaintiff	:	No. 3:13-CV-1942
	:	(Judge: A. Richard Caputo)
	:	
v.	:	(M.J.: Susan E. Schwab)
	:	
DANIEL S. KEEN, MICHELLE WELLER, JESSICA STERNER-LENSBOWER, AND ISAAC BURKHOLDER, Defendants	:	JURY TRIAL DEMANDED
	:	(Electronically Filed)

**AFFIDAVIT OF FRANKLIN COUNTY JAIL CHAPLAIN ISAAC
BURKHOLDER**

Issac Burkholder, being duly sworn according to law, hereby deposes and states as follows:

1. I am currently the Chaplain at the Franklin County Jail (FCJ). I have held this position since October, 2000.
2. Put broadly, my duties include the fulfillment of inmates' spiritual needs by overseeing and delivering individual and group religious programming and counseling.
3. The FCJ obtained my services via a contract with United Churches of the Chambersburg Area, for compensation totaling \$15,000.00 per year.
4. My duties also include supervising the various Volunteer Clergy associated with other religions, sects, and sub-sects, who donate their time

to provide services to inmates of their religious persuasion in the FCJ. I also develop a schedule of religious services and study groups, either conducted by the Volunteer Clergy or by inmates themselves, and disseminate the schedules throughout the institution.

5. A true and correct copy of the 2012-13 Volunteer List, as updated on July 15, 2013, is attached hereto and incorporated herein by reference as Exhibit "A".

6. The Franklin County Jail does not employ any full-time Rabbi to service Jewish inmates, Apostle to service Mormon inmates, Preacher to service Protestant inmates, Monk, Lama, or Scholar to service Buddhist inmates of various sects, Brahmin to service Hindu inmates, or Guru to service Sikh inmates. There is no full-time Shia Muslim cleric. There is also no full-time cleric to service Eastern Rite Catholic inmates, Asatru inmates, Native American inmates of various tribes, Rastafarian inmates, Roman Catholic inmates, or Wiccan inmates.

7. It is my understanding that Taleem is the urdu word for "education," and denotes a program of education including recitation and review of the Qur'an, the holy book of Islam, as well as of the Hadith and Sunnah, which are libraries cataloging the sayings and doings of the Prophet Muhammad. It is my understanding that during Taleem, the teachings of Islam are discussed and meditated upon.

8. It is my understanding that "Jumu'ah" is a congregational prayer held by Muslims every Friday, just after noon, involving a sermon, recitation of traditional prayers, and a congregational prayer, which is traditionally led by an Imam but may be led by an adult male member of the Islamic community. The Jumu'ah is obligatory for Muslim men above the age of puberty, and requires they pray in congregation either in a mosque or with a group of Muslims.

9. At present, there is no volunteer Imam to provide religious services, including leading Taleem studies or officiating Jumu'ah Friday prayer, to Muslim inmates.

10. I have personally made inquiries aimed at obtaining the services of an Imam to provide such religious services, on numerous instances including but not limited to:

a. At a Prison Chaplains' Conference in October of 2011, as well as at other conferences I have attended, I made inquiries of numerous other Chaplains in attendance, but was repeatedly told the provider would require compensation, or that the Chaplain's institution was also searching for an Imam.

b. I have contacted various Islamic religious organizations and communities, including but not limited to: Islamic Society of Western Maryland, Islamic Center Masjid Al, Islamic Society of Greater Harrisburg,

Harrisburg Masjid, and the American Muslim Mission.

c. I have explored the availability of a volunteer Imam by making inquiry of my connections with other religious organizations in the Chambersburg and Franklin County Community.

11. I believe the rural location of the Franklin County Jail adversely impacts the efforts to find a volunteer Imam, as there is not a large Islamic community in Franklin County, and volunteers from the two nearest population centers, Harrisburg or Hagerstown, would be required to travel a substantial distance.

12. As there is currently no volunteer Imam to conduct Muslim religious services, I have arranged for Muslim inmates to be given the option of praying together in congregation for Friday Jumu'ah services in the chapel of the Franklin County Jail. I respectfully supervise the services and provide any assistance or support as may be requested by the attending inmates.

13. According to my understanding of Islamic tradition, Christians, Jews and Muslims are all considered "*ahl al-kitab*" or "people of the book," in recognition of the similarity of belief amongst adherents of the three traditions, including the belief that G-d created the entire universe, dominates existence, and is omnipotent.

14. The Qur'an contains several references to the respect and similarity of Jews, Christians and Muslims, including but not limited to the following oft cited passage:

"If God had so willed, He would have made all of you one community, but he has not done so, in order that he may test you according to what he has given you; so compete in goodness. To God shall you all return, and He will tell you the truth about what you have been disputing." (Qur'an 5:48)

15. Given the similarity of belief and common root of all three (3) faiths, I do not believe that my supervision of the inmate led services impinges upon their religious practice in any manner, nor that it burdens their practice in any manner, nor has any inmate ever expressed a contrary belief to me.

16. I have also arranged for Muslim inmates to gather each Thursday for Taleem studies, in the chapel of the Franklin County Jail. I respectfully supervise the study, and provide any assistance or support as may be requested by the attending inmates.

17. Schedules showing the Jumu'ah services and the Taleem studies for the period Mr. Kelly-Bey was incarcerated in the FCJ are attached hereto and incorporated herein by reference as Exhibit "B".

18. Special accommodations for further religious observance are made for Muslim inmates during significant religious holidays such as Ramadan including

but not limited to modified meal plans and delivery times to accommodate the fast during daylight hours, and provision of the Eid al-Fitr feast.

19. Muslim inmates are permitted to engage in individual daily prayer.

20. I have reviewed the United States Department of Justice Technical Reference on Inmate Religious Beliefs and Practices [hereinafter "DOJ Technical Reference"]. I am also familiar with the requirement of a Muslim religious diet through my training as a Chaplain.

21. It is my understanding that Islamic jurisprudence specifies foods which are *halāl*, or lawful, and those which are *harām*, or unlawful, the classifications being derived from the Qur'an, Hadith and Sunnah. Between foods that are *halāl* and those that are *harām* are *mashbooh*, or questionable, doubtful, unclear. These foods are also to be avoided, as it is not known whether they are lawful or unlawful. My understanding of those foods which are *harām* is in accord with the description set forth in the DOJ Technical Reference.

22. Based on my reading of the DOJ Technical Reference and my personal education, training and knowledge, I have reviewed the General Population Meal Plan, and believe that it provides a diet compliant with Muslim religious practice.

23. In the case that a Muslim inmate does not believe that the General Population Meal Plan provides a compliant diet, they are given the opportunity to request the Vegetarian Meal Plan in lieu thereof.

24. Based on my reading of the DOJ Technical Reference and my personal education, training and knowledge, I have reviewed the Vegetarian Meal Plan, and believe that it complies with the dictates of Islam, and provides a halāl diet in accordance with Muslim religious tradition.

The foregoing is based upon my personal knowledge and I am competent to and would testify to same if called as a witness at the trial of this matter.

Date: 11/04/13

Isaac Burkholder
Isaac Burkholder

Sworn to and subscribed before
me this 4th day of
~~October~~, 2013.
November

Notary

Melyssa H. Flud



